

Decision Type: **CRAB**
Docket No.: **CR-04-722**
Date: **November 8, 2005**
Parties: **Patricia Flynn v. PERAC**

Appearance for Petitioner:
 Gregory Galvin, Esq.,
 775 Pleasant Street - Unit 16
 Weymouth, Ma. 02189

Appearance for Respondent:
 Barbara Phillips, Esq.
 PERAC 5 Middlesex Avenue - 3rd Floor
 Somerville, Ma. 02145

Administrative Magistrate:
 Joan Freiman Fink, Esq.

DECISION

Pursuant to G.L. c. 32 s. 16(4), the Petitioner, Patricia Flynn, is appealing the September 16, 2004 decision of the Respondent, PERAC, refusing to abide by the lump sum agreement entered into by Ms. Flynn and the Town of Weymouth (Exhibit 2). The appeal was timely filed in accordance with the provisions of G.L. c. 32 s. 16(4).

A hearing pursuant to G.L. c. 7 s.4H was held on November 1, 2004 at the offices of the Division of Administrative Law Appeals, 133 Portland Street, Boston, Ma. Various documents were entered into evidence at the hearing (Exhibits 1 - 7). The Petitioner's Pre-hearing Memorandum was marked as "A" for identification and the Respondent's Pre-hearing Memorandum as marked as "B" for identification. The Petitioner, Patricia Flynn, testified in her own behalf. One cassette tape recording was made of the hearing.

FINDINGS OF FACT

Based on the testimony and evidence presented, I make the following findings of fact:

1. The Petitioner, Patricia Flynn, d.o.b. 1/3/42, commenced employment as the secretary to the Director of Special Education of the Weymouth Public Schools in 1978 and became a member of the Weymouth Retirement System at that time (testimony of the Petitioner).

2. She held various positions in the Weymouth Public Schools during her twenty-four year tenure in the school system. From-1996 to 1999, she served as secretary to the Associate Superintendent and in 1999, she became the secretary to the Assistant Superintendent of Curriculum (testimony of the Petitioner).

3. On or about October of 1993, the Petitioner, while carrying files from one school building to another, fell in the school parking lot injuring her knees, hip and back (testimony of the Petitioner).

4. The Petitioner did not miss any work as a result of the injury she received in October of 1993 but she sought treatment from an orthopedic surgeon and a chiropractor for pain in her back (testimony of the Petitioner).

5. On or about December 10, 1999, the Petitioner, while carrying some files down a stairway at work, fell down injuring her back, elbows, hip and buttocks (testimony of the Petitioner).

6. The Petitioner did not miss any work as a result of the injury of December 10, 1999 but continued her ongoing treatment with orthopedic specialists (testimony of the Petitioner).

7. On April 27, 2000, the Petitioner injured her back while she was sorting test papers to be delivered to various locations throughout the Weymouth School System (testimony of the Petitioner).

8. The Petitioner was out of work from April 27, 2000 until mid-August of 2000 and received workers' compensation benefits (testimony of the Petitioner).

9. Although the Petitioner attempted to perform her duties which were often physically demanding, she felt increasing pain in her back. In December of 2000, she transferred to a part-time position in order to alleviate some of the stress on her back. She continued to receive workers' compensation benefits (testimony of the Petitioner).

10. At some point in early 2002, she was diagnosed as having a herniated disc and was advised by a neurosurgeon not to return to work (testimony of the Petitioner).

11. The Petitioner's last day of work was May 27, 2002 (testimony of the Petitioner).

12. The Petitioner remained on workers' compensation benefits after she stopped working (testimony of the Petitioner).

13. On or about July 2002, the Petitioner filed an application for accidental disability retirement benefits. The Weymouth Retirement Board granted the application after a Medical Panel certified that the Petitioner was permanently disabled from performing the essential duties of her position and that her disability was causally related to her employment. On December 4, 2002, PERAC approved the award of accidental disability retirement benefits to Ms. Flynn (Exhibit 3).

14. On February 24, 2004, the Weymouth Retirement Board voted to establish a policy whereby the Board would accept between 20% and 25% of the proceeds of lump sum workers' compensation settlements (Exhibit 7A).

15. Shortly after the establishment of this policy, two members of the Weymouth Retirement Board informed Ms. Flynn of this vote and advised her to consider settling her workers' compensation claim (testimony of the Petitioner).

16. Relying on the representation made by the members of the Weymouth Retirement Board, the Petitioner, whose husband had died on January 1, 2003, decided to settle her workers' compensation claim (testimony of the Petitioner).

17. On July 20, 2004, the Petitioner and the Town of Weymouth entered into an agreement for redeeming liability by lump sum under G.L. c. 152 (Exhibit 6).

18. The lump sum was \$15,000. According to the agreement, from the lump sum amount the following were deducted and paid directly to the parties: \$2,500 in attorney's fees and \$3,000 to the Weymouth Retirement System (Exhibit 6).

19. The \$3,000 paid to the Weymouth Retirement System was in exchange for any offset from the workers' compensation benefits against the amount received as accidental disability retirement (Exhibit 6).

20. On September 16, 2004, PERAC sent the Weymouth Retirement Board notification that with respect to the lump sum settlement agreement, although the Board would receive \$3,000 or 20% of the settlement, the remaining \$9,500 is subject to offset because it is not attributable to sections of G.L. c. 152 that are specifically excluded under the provisions of G.L. c. 32 s.14(2)(a) (Ex. 2).

21. PERAC further stated in its letter of September 16, 2004 that "the settlement amount of \$9,500 shall be divided by the weekly workers' compensation rate of \$166.52, giving a result of 58 weeks over which the pension is to be offset" (Exhibit 2).

22. On September 24, 2004, the Petitioner filed a timely appeal of PERAC's decision with the Contributory Retirement Appeal Board (Exhibit 1).

23. Subsequent to PERAC's letter of September 16, 2004, the Weymouth Retirement Board commenced a weekly offset of the Petitioner's accidental disability retirement pension. As the offset of \$9,500 has been completed, the Petitioner is currently receiving the full amount of her pension (testimony of the Petitioner).

CONCLUSION

G.L. c. 32 s.14(2)(a) provides in pertinent part that:

All sums of money payable under the provisions of [G.L. c. 152 s.s.31, 34, 34A, 34B, 35, and 35A] directly to a retired member...including so much of the amount of any lump sum settlement payable under the provisions of such sections directly to any such person as is allocable to the period following the retirement..., but excluding any payments for or amounts allocable to any period prior to the date his retirement allowance became effective, shall be offset against and payable in lieu of any pension payable on his account under the provisions of section six, seven, or nine by reason of the same injury... (emphasis supplied).

In the current case, the Petitioner settled her workers' compensation case by way of a lump sum settlement of \$15,000. In accordance with the provisions of G.L. c. 32 s. 14(2)(a), this lump sum settlement that the Petitioner received as a result of the work-related injuries to her back must be offset against the accidental disability retirement pension that she received for her work-related back injuries pursuant to G.L. c. 32 s.7.

From the total of \$15,000, deductions of the amounts identified and attributed to the other sections of the workers' compensation law were made including \$2500 in legal fees and \$3000 to the Weymouth Retirement Board. A total of \$9500 was left of this lump sum settlement to be offset against the accidental disability retirement pension awarded to Ms. Flynn.

The Petitioner asserts that since the Weymouth Retirement Board voted to accept 20% or \$3000 of the lump sum settlement as the entire amount to be received as an offset, she is entitled to receive the remaining \$9500 from the settlement. Moreover, the Petitioner notes that she relied on the representation by the Weymouth Retirement Board that it would only take a maximum of 20% to 25% of her lump sum settlement when she decided to settle her workers' compensation claim. Absent that representation, the Petitioner argues that she would have had no incentive to settle the claim at the time that she initiated settlement discussions with the Town during the late spring/early summer of 2004.

Despite the Petitioner's argument, there is no provision in G.L. c. 32 that would permit the Weymouth Retirement Board to accept less than the amount of a lump sum settlement minus the deductions attributable to sections other than those specified in G.L. c. 32 s.14. G.L. c. 32 does not allow a Retirement Board to waive the offset mandated by G.L. c. 32 s.14(2).

In the case of Charles Marceline v. Barnstable County Retirement Board and PERAC, CR-01-807 (DALA dec. 6/4/03, no CRAB dec.), it was determined that the full amount of the lump sum settlement less the deductions for legal fees, inchoate rights, and loss of function was to be offset against the accidental disability retirement pension received by Mr. Marceline. In Marceline, the Barnstable County Retirement Board had attempted to redeem an offset equal to \$7,500 in lieu of the offset of the full amount of \$18,886.68. However, it was decided that the Barnstable County Retirement Board did not have the authority to waive the full amount of the offset as mandated by the statute.

While I empathize with the Petitioner's situation, nonetheless, G.L. c. 32 contains no provision granting the Weymouth Retirement Board the authority to accept less than the statutorily mandated amount.

In light of the foregoing, I order that the decision of PERAC ordering the amount of \$91500 of the total lump sum settlement of \$15,000 be offset against the Petitioner's weekly pension benefits pursuant received pursuant to G.L. c. 32 s.7 be affirmed. The Petitioner's request for a refund is hereby denied.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS
/s/Joan Freiman Fink
Administrative Magistrate

Dated: 11/8/05

End Of Decision